Attorney Docket No.: NL 020 314
Ref. No.: 40160/11001

REMARKS

I. INTRODUCTION

Claims 6-10 have been amended. No new matter has been added. Claim 11 has been canceled. Thus, claims 1-10 are pending in the present application. In view of the above amendments and the following remarks, it is respectfully submitted that all of the pending claims are in condition for allowance.

II. OBJECTION TO THE SPECIFICATION

The Examiner notes that the Specification does not conform to the preferred layout for as provided in the CFR. (*See* 6/4/07 Office Action, p. 2.) However, Applicants note that these guidelines are merely non-mandatory suggestions. (*See* 37 C.F.R., § 1.77.) Accordingly, Applicants submit that the Specification is allowable as filed.

III. CLAIM REJECTIONS – 35 U.S.C. § 112

Claims 1-10 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. (*See* 6/4/07 Office Action, pp. 3-4.)

The Examiner asserted that the term "substantially," as used in claims 1 and 8, is a relative term that renders the claim indefinite. (*See id.*, p. 3.) However, Applicants respectfully submit that one of ordinary skill in the art would understand the meaning of the term "substantially" as used in the above claims. For example, with regards to the recitation of "substantially empty" contained in claims 1 and 8, one of ordinary skill in the art would understand that a buffer capable of holding gigabytes of data would be considered "substantially empty" if it were emptied except for an insignificant amount of data (e.g., several bytes of data).

Similarly, regarding the recitation of "substantially equal" amounts of data found in claim 1, one of ordinary skill in the art would understand that when working with data that is measured in millions or billions of bytes, it is not always required that an exact match of numbers needs to be satisfied for something to be equal (e.g., an exemplary buffer storing one billion bytes of data contains a "substantially equal" amount of data to a buffer storing one billion and three bytes). Accordingly, Applicants respectfully submit that the claims are sufficiently defined and that the rejection on this rationale should be withdrawn.

The Examiner further asserted that claims 6 and 7 recite the limitation "said input data" but fail to provide proper antecedent basis for this limitation. (*See id.*, p. 3.) In view of the amendments to claims 6 and 7, it is respectfully submitted that these rejections should be withdrawn.

The Examiner further asserted that claim 8 utilized unclear means-plus-function language. (*See id.*, pp. 3-4.) In view of the amendment to claim 8, it is respectfully submitted that this rejection should be withdrawn.

IV. CLAIM REJECTIONS – 35 U.S.C. § 101

Claims 8-10 stand rejected under 35 U.S.C. § 101 because they are directed to software per se, and therefore claim non-statutory subject matter. (*See* 6/4/07 Office Action, pp. 4-5.) In view of the amendments to claims 8-10, it is respectfully submitted that this rejection should be withdrawn.

V. CLAIM REJECTIONS – 35 U.S.C. § 103(a)

Claims 1-10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 7,170,856 to Ho et al. (hereinafter "Ho") in view of U.S. Pat. Pub. 2003/0053416 to Ribas-Corbera et al. (hereinafter "Ribas"). (*See* 6/4/07 Office Action, pp. 5-7.)

Ho describes a jitter buffer that receives a plurality of data packets comprising a circuit emulation service over internet protocol (hereinafter "CESIP"). (*See* Ho, Abstract.) The buffer buffers the plurality of data packets and plays data from the plurality of data packets at a constant bit rate corresponding to the CESIP. (*See id.*)

Ribas describes a method and system including an improved generalized reference decoder that operates according to a number of sets of rate and buffer parameters for a given bit stream. (*See* Ribas, Abstract.) Each set characterizes a leaky bucket model and contains three parameters representing the transmission bit rate, buffer size, and initial decoder buffer fullness. (*See id.*) An encoder provides at least two sets of these parameters, whereby the decoder selects one or interpolates between them to operate at any desired peak bit rate, buffer size or delay. (*See id.*) The generalized reference decoder may select the smallest buffer size and corresponding delay that decodes the bit stream without buffer underflow or overflow, or alternatively may select and operate at the minimum required peak transmission rate, or something between both. (*See id.*) In practice, the buffer size, delay and/or the peak transmission rate can be reduced by significant factors, and/or the signal-to-noise ratio can be increased. (*See id.*)

Claim 1 recites "[a] method of changing an output rate of information for a buffer (3) with a constant first output rate (R1), where the buffer (3) receives output data (2b) from a data source (2a), and the output data (2b) is added to be stored in said buffer (3), characterized in that the method comprises the steps of:" "*halting the reception of output data from the data source*;" "outputting the stored output data of said buffer at said first output rate (R1) until said buffer is empty;" "stopping outputting of the content of said buffer;" "*resuming receiving and storing of said output data from the data source in said buffer when the buffer is substantially empty*;" "setting a second constant output rate (R2) as the output rate of said buffer;" and "commencing output of the stored content of said buffer at said second output rate (R2), when the amount of buffered data is substantially equal to the second constant output rate (R2) times a requested buffer-time (TB2)."

Applicants respectfully submit that Ho does not disclose "halting the reception of output data from the data source," as recited in claim 1. Ho states:

> In block 1145, if the high threshold is exceeded, the jitter buffer is flushed to start fresh with new packets. In alternate embodiments, only part of the jitter buffer is flushed. In either case, enough data is flushed so that the receiving end of the circuit can catch up with the sending end of the circuit, to try to regain synchronization and maintaining the quality of service.

(Ho, col. 11, l. 64 – col. 12, l. 3.)

This flushing of the data insures that the amount of data stored beyond the play pointer does not exceed a predetermined high threshold; if the high threshold is exceeded, the data past the threshold may become stale by the time it is played. (*See id.*, col. 11, l. 64 – col. 12, l. 8.) Playing stale data can cause a number of problems; for example, in a voice communication, stale data is likely to sound like an echo. (*See id.*, col. 12, ll. 9-13.) However, Ho does not disclose or suggest that reception by the receiving end is halted during the flushing, only that the jitter buffer is flushed. There is nothing in Ho to suggest that flushing the jitter buffer also includes halting the reception. In fact, if reception were to be halted at the same time as the buffer was flushed, no playback would be possible until reception recommenced and the data exceeded the low threshold, so it would be counterproductive to both halt reception and flush the buffer simultaneously.

Therefore, Ho does not include the halting step recited in claim 1. Ribas does not cure this deficiency of Ho; Ribas does not disclose halting receipt of data into the encoder buffer 204 from the input 200. Therefore, Ho and Ribas, alone or in combination, neither disclose nor suggest "halting the reception of output data from the data source" as recited in claim 1. Accordingly, this rejection should be withdrawn. Because claims 2-7 depend from, and, therefore, include all of the limitations of claim 1, it is respectfully submitted that these claims are also allowable for at least the reasons stated above.

Claim 8 recites "[a] computer readable storage medium including a set of instructions operable by a processor, the instructions operable to: receive output data from a data source into a buffer having a constant first output rate (R1); add and store said output data in said buffer;

stop the reception of output data from the data source; output the stored content of said buffer at said first output rate (R1) until said buffer is empty; stop outputting of the content of said buffer; resume receiving and adding/storing output data from the data source (2a) when the buffer (3) is empty; set a second constant output rate (R2) as the output rate of said buffer; and commence output of the stored content of said buffer at said second output rate (R2), when the amount of buffered data is equal to the second constant output rate (R2) times a requested buffer time (TB2)." For the reasons discussed above with reference to claim 1, Applicants respectfully submit that Ho and Ribas, alone or in combination, neither disclose nor suggest "stop the reception of output data from the data source" as recited in claim 8. Accordingly, this rejection should be withdrawn. Because claims 9 and 10 depend from, and, therefore, include all of the limitations of claim 8, it is respectfully submitted that these claims are also allowable for at least the reasons stated above.

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CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

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